ORIGINAL

OPEN MEETING AGENDA ITEM

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

EXCEPTION

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AZ CORP COMMISSION
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KRISTIN K. MAYES, Chairman
GARY PIERCE
SANDRA D. KENNEDY
PAUL NEWMAN
BOB STUMP

IN THE MATTER OF THE APPLICATION OF JOHNSON UTILITIES, L.L.C., DBA JOHNSON UTILITIES COMPANY FOR AN INCREASE IN ITS WATER AND WASTEWATER RATES FOR CUSTOMERS WITHIN PINAL COUNTY, ARIZONA.	DOCKET NO. WS-02987A-08-0180

EXCEPTIONS OF SWING FIRST GOLF LLC

Swing First Golf LLC ("Swing First") hereby files its exceptions in the above-captioned docket.

RESPECTFULLY SUBMITTED on May 17, 2010.

Arizona Corporation Commission
DOCKETED
MAY 17 2010
DOCKETED BY

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Original and 13 copies **filed** on May 17, 2010, with:

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
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IN THE MATTER OF THE APPLICATION OF JOHNSON UTILITIES, L.L.C., DBA JOHNSON UTILITIES COMPANY FOR AN INCREASE IN ITS WATER AND WASTEWATER RATES FOR CUSTOMERS WITHIN PINAL COUNTY, ARIZONA.	DOCKET NO. WS-02987A-08-0180

EXCEPTIONS OF SWING FIRST GOLF LLC

Swing First Golf LLC ("Swing First") hereby submits the following exceptions to the May 7, 2010, Recommended Opinion and Order in the above-captioned docket ("ROO").

EXCEPTION 1 – <u>CUSTOMERS SHOULD NOT SUBSIDIZE UTILITY WITH A TEN-PERCENT OPERATING MARGIN</u>

The ROO correctly notes the following concerns with providing Utility an operating margin:

1. "Authorizing an operating margin for a utility the size of the Company is problematic"[1]
2. "[A]uthorizing an operating margin when there is no rate base investment has the potential of allowing the utility to realize a profit without making any investment, creating a windfall for the utility, without the utility having put any capital at risk.[2]
3. "In the absence of a FVRB, the Arizona Constitution does not require the Commission to authorize rates to allow the Company to collect any revenue in addition to its operating expenses.[3]

[1] ROO at 50:14-15.
[2] *Id.* at 50:19-22.
[3] Id. at 50, n. 317.

Yet, despite these extraordinary concerns, the ROO goes on to award Utility a ten-percent operating margin.

A ten-percent operating margin would be an enormous windfall for Utility. The ROO would provide Utility operating income (profit) of $1,307,438 for its water division and $1,045,913 for its wastewater division.[4] Just as acknowledged in the ROO, this would allow Utility to make a windfall profit—provided by its customers—of over $2.3 million, without having ever put any significant capital at risk.

The ROO devoted 30 pages to carefully consider the parties' positions concerning plant in service.[5] Ultimately, the ROO would disallow millions of dollars in plant, because plant was not supported by adequate records, adjustments were necessary to remove affiliate profits, plant exceeded customer needs, plant was not used and useful, or for other carefully analyzed reasons. Then, in one short paragraph, the ROO effectively gave back almost all the disallowed plant by providing Utility a ten-percent operating margin[6]

Providing Utility a ten-percent operating margin would be equivalent to adding $30,924,320 of plant back to Utility's combined rate base. Based on RUCO's recommended 8.18 percent weighted cost of capital for Utility, the analysis follows:

		Water Division	Wastewater Division	Total
2	Operating Margin Revenue	$ 1,307,438	$ 1,045,913	$ 2,353,351
3	Composite Depreciation Rate	3.00%	3.00%	
4	Additional Depreciation if Plant added to get rate base to zero ([3]*[8], if[8]<0)	$ 410,485		
5	Operating Margin available to support additional plant above zero rate base ([1]-[5])	$ 896,953	$ 1,045,913	$ 1,942,866
6	WACC + Composite Depreciation Rate	0.1118	0.1118	
7	Equivalent Rate Base Supported above zero	$ 8,022,835	$ 9,355,215	$ 17,378,050
8	Authorized Rate Base	$ (13,682,831)	$ 136,562	$ (13,546,269)
9	**Additional Rate Base Effectively Allowed ([7]-[8])**	**$ 21,705,666**	**$ 9,218,653**	**$ 30,924,319**

[4] *Id.* at 51:16-24.
[5] *Id.* at 4 – 34.
[6] *Id.* at 50:24 – 51:4.

The Commission has historically provided operating margin relief only for small utilities to allow them to fund needed capital expenditures. As noted, this is an extraordinary remedy, not required by the Constitution. Utility is a Class A public-service company and has not shown that it requires funding to support a large capital budget.

Requiring customers to gift $2.3 million annually to Utility would be the most egregious form of corporate welfare. There is no record evidence that a ten-percent operating margin is required "to build its equity investment,"[7] or any evidence whatsoever that George Johnson would use the funds for capital investment. Most likely, he would just dividend all the customer-provided funds to himself and related parties.

Based on its Annual Reports to the Commission, Utility has reported significant profits for both its water and sewer division every year from 2002 through the 2007 test year. Yet, despite generating millions of dollars in profits, Utility still has almost no equity in its capital structure.[8]

Finally, the Commission has never provided operating-margin relief for a utility with environmental or customer-service records like Utility's. Since 2003, ADEQ has issued Utility an amazing 14 NOVs for various environmental infractions.[9] Six of these NOVs are still open and unresolved.[10] Providing Utility operating-margin relief would simply reward bad behavior.

Utility's rates should be set only to recover its test-year expenses and no higher. This is all that is required by the Constitution and is all that is warranted in light of Utility's continuing bad behavior. Customers should not be required to put one more nickel in George Johnson's pocket than is constitutionally required.

Exhibit 1 is a suggested amendment to the ROO that eliminates the operating-margin subsidy.

---

[7] *Id.* at 51:4.
[8] *Id.* at 52:10-11.
[9] Ex. SF-9; Tr. at 1025:22-24.
[10] Tr. at 377:22 – 382:9.

EXCEPTION 2 – RUCO'S CAGRD EXPENSE WAS INCORRECTLY CALCULATED

The ROO correctly determined that "it would be inappropriate to authorize a CAGRD adjustor mechanism at this time."[11]

> The Company has not demonstrated the record keeping ability necessary to administer a CAGRD adjustor mechanism. The record in this case is replete with evidence of the Company's demonstrated inability to produce documentation in the standard format required for a regulated utility during the processing of a rate case. In addition, the Company has very clearly expressed an unwillingness to comply with the requirements necessary for proper administration and oversight of the proposed CAGRD adjustor mechanism. The Company's stated unwillingness, coupled with the Company's shoddy record keeping behavior to date, demonstrate that it would not be wise at this time to grant the Company authority to implement a complex adjustor mechanism.[12]

Having rejected a CAGRD adjustor, the appropriate allowance would be test-year CAGRD expense of $883,842.[13] Unfortunately, the ROO would adopt RUCO's erroneous normalization of CAGRD expense, which would inappropriately triple test-year CAGRD expense. This would inadvertently provide Utility a $1.8 million hand-out from its customers.

RUCO calculated normalized test-year CAGRD expense of $2,558,930. RUCO's calculation appears to have been the result of two inadvertent errors.

RUCO's first error was that it used test-year water sales of 2,631,314 1000-gallons.[14] RUCO stated that the source for this figure was Utility's application.[15] Turning to Utility's testimony, we see the 2,631,314 figure at page 17 of Mr. Bourassa's direct testimony.[16] However, this figure is not supported in Mr. Bourassa's supporting schedules. On his accompanying exhibit, water sales are shown as 2,361,314 1000-gallons.[17] In his testimony, Mr. Bourassa apparently transposed two digits.

RUCO's second error was far more serious. RUCO unfortunately used test-year sales to calculate the normalized CAGRD fee; however, a utility only pays the CAGRD fee on the net

[11] ROO at 45: 3-4.
[12] *Id.* at 45:4-13.
[13] RUCO Final Schedule RLM-16.
[14] *Id.* at line 10.
[15] *Id.*
[16] Bourassa Direct Water Testimony at 17:4.
[17] *Id.* at Exhibit C-2, line 4.

water sales after several offsetting credits. The CAGRD fee is calculated after allowing, by means of a ratio, for a number of credits to actual groundwater usage for retiring irrigation credits, using CAP-water, replenishing groundwater, and for other reasons. Appendix A is a copy of Utility's 2006 Annual Report to the CAGRD for the Phoenix and Pinal Active Management Areas. It shows that Utility only pays CAGRD fees on 0.53% of groundwater withdrawn in these AMAs.[18] By calculating its annualized CAGRD fee based on annual sales, RUCO applied its annualized fee to almost twice the amount of water than should have been used.

It is clear, even without looking at Appendix A, that RUCO's calculation is incorrect. RUCO does not annualize water sales, just the CAGRD fee. RUCO relied on the CAGRD website to determine the 2009/2010 CAGRD fees.[19] Appendix B is a copy of the appropriate page from the CAGRD website.[20] It shows that the Phoenix AMA rates increased from $240/AF to $318/AF, a 32.5% increase, and that Pinal AMA rates increased from $219/AF to $279/AF, a 21.5% increase. If CAGRD rates went up approximately 30% (blended) in this two-year period, and test-year sales were not adjusted, then the normalized CAGRD fee should also have gone up 30%, not tripled.

It is clear that RUCO's calculation is incorrect. However, there is no record evidence that would allow the Commission to correctly normalize CAGRD expense. To do this, the record would have to include verified post test-year groundwater withdrawals, the appropriate ratio to calculate excess groundwater withdrawals, and the appropriate CAGRD rates. Lacking these three required pieces of evidence, it is inappropriate to allow Utility to recover anything but test-year CAGRD expense of $883,842.

Exhibit 2 is a suggested amendment to the ROO that sets CAGRD expense at $883,842.

[18] The vast majority of Utility's water pumping is from the Phoenix AMA.
[19] RUCO Final Schedule RLM-16 at 4-5.
[20] RUCO converted the acre-foot rates to 1000-gallon rates.

EXCEPTION 3 – UTILITY NEEDS TO BE HELD MORE ACCOUNTABLE FOR ITS UNPRECEDENTED NUMBER OF ENVIRONMENTAL VIOLATIONS

Since 2003, ADEQ has issued Utility an amazing 14 NOVs for various environmental infractions.[21] Six of these NOVs are still open and unresolved.[22]

Despite the previous records of both Mr. Johnson and his Utility concerning other environmental matters, Utility amazingly claims that its unprecedented number of NOVs result from "selective enforcement" by ADEQ.[23]

The ROO claims that Utility's numerous, documented environmental violations are of "great concern" but "are [not] jeopardizing the public's safety and health."[24] However, the Commission has already found that at least one of these NOVs involved a threat to public safety.

During the weekend of May 17 and 18, 2008, Utility's Pecan Water Reclamation Plant ("WRP") had two sanitary sewer overflows (SSOs), with a combined estimate of 10,000 gallons or more of untreated raw sewage flowing through a spillway into Queen Creek.[25] As a result, the Queen Creek Wash was contaminated with E-coli bacteria. Utility failed to notify ADEQ, which only found out about the discharge because of e-mails from local residents. The discharge allegedly occurred as a result of the failure of undersized sewage pumps. The Arizona Department of Environmental Quality ("ADEQ") issued Notice of Violation ("NOV") 97512 after it evaluated the discharge. NOV 97512 is one of Utility's six open NOVs.

In Docket No. WS-02987A-07-0487, Utility applied to extend its sewer CC&N. The Pecan Wastewater Treatment Plant's performance issues were closely considered in that case, and on March 17, 2009, the Commission issued Decision No. 70849. In that Decision the Commission expressed specific concern about Utility's continuing sewer spills:

> However, Johnson's two recent SSOs raise serious concerns regarding public safety. The Company experienced two SSOs in the same location within a short

[21] Ex. SF-9; Tr. at 1025:22-24.
[22] Tr. at 377:22 – 382:9.
[23] Tr. at 809:9-21.
[24] ROO at 56:8-12.
[25] Ex. SF-9, NOV 97512.

time span. The homeowners in the Pecan Creek North subdivision, living adjacent to the concrete channel where the sewage from the SSOs was contained, were subjected to viewing sewage from their homes and test results of the storm water in the Queen Creek wash adjacent to where the SSOs occurred continue to test positive for the presence of E. coli and coliform.[26]

The Commission did not believe that Utility had fully dealt with all the Pecan Plant issues, so the Decision contains three specific ordering paragraphs.

> IT IS FURTHER ORDERED that Johnson Utility L.L.C., shall file by December 31, 2009, with Docket Control, as a compliance item in this docket, documentation from the Arizona Department of Environmental Quality demonstrating that Johnson Utility L.L.C.'s Pecan Water Reclamation Plant (ADEQ Inventory #105324) is in full compliance and that the Notice of Violation issued on March 4, 2008, and June 5, 2008, have been closed.
>
> IT IS FURTHER ORDERED that if Johnson Utility L.L.C. fails to meet the above timeframe, the Utilities Division Staff shall file a pleading requesting the Commission to order Johnson Utility L.L.C. to appear and show cause why the conditional extension of its wastewater Certificate of Convenience and Necessity granted herein, should not be considered null and void.
>
> IT IS FURTHER ORDERED that if Johnson Utility L.L.C. achieves full compliance with the Arizona Department of Environmental Quality for its Pecan Water Reclamation Plant (ADEQ Inventory #105324) on or before December 31, 2009, the extension of Johnson Utility L.L.C.'s Wastewater Certificate of Convenience and Necessity shall become effective on the first day of the month following Johnson Utility L.L.C.'s filing with Docket Control proof of its compliance and the Utilities Division Staff's confirmation of such compliance with Docket Control.[27]

Despite the Commission's clear order, Utility has, as is its habit, simply ignored the Commission's December 31, 2009, deadline. Nothing has been submitted in the docket file showing that Utility's Pecan Plant is in full compliance with ADEQ or that the NOVs have been closed. Nor has Staff requested a show cause order from the Commission for Utility's failure to comply with the Commission's Order.

The ROO really does not address Utility's unprecedented number of NOVs. It would only require that Utility report on the NOVs and what steps that Utility is taking to come into

[26] Decision No. 70849, dated March 17, 2009, at 11:11-12. Emphasis added.
[27] *Id.* at 13:25 – 14:11. Emphasis added.

compliance.[28] Respectfully, this will not get Utility's attention to ensure that the open NOVs are resolved.

The Commission needs to get Utility's attention. Nothing has worked to date. Exhibit 3 is a suggested amendment to put some teeth in the ROO, so that Utility may finally realize that the Commission is serious and that its continued environmental violations will not be tolerated.

EXCEPTION 4 – <u>THE RATE DECREASES SHOULD BE RETROACTIVE</u>

In Decision No. 68235, dated October 25, 2005, the Commission ordered Utility to file a rate case for its water and wastewater divisions by May 1, 2007, using a 2006 test-year.[29] Utility made a series of dilatory filings requesting relief from that requirement.[30] However, the Commission never granted Utility's request.[31]

Utility simply ignored the Commission's Order. Despite never having obtained Commission relief from the filing deadline, Utility delayed its rate filing until March 31, 2008, based on a 2007 test year.

The ROO recommends significant rate decreases for both of Utility's water and wastewater divisions. It is quite likely that Utility's delayed filing caused these rate decreases to also be delayed.

Utility's customers were the victims of Utility's unauthorized filing delay. The Commission has the opportunity to make them whole by ordering that the rate decreases be retroactive to May 31, 2009, and ordering customer refunds of the excess rates since then, including interest at Utility's cost of capital.

The bar on retroactive ratemaking does not apply. Utility was ordered to file a rate case by May 2007. When the Commission ordered this filing deadline, it also was in effect ordering

[28] ROO at 56:24 – 57:1.
[29] Ex. SF-2.
[30] Ex. SF-3, SF-4, SF-5, and SF-6.
[31] Utility has argued that September 18, 2007, letter from Commission Chief Counsel Chris Kempley somehow authorized the delay. (The letter is attached to SF-6.) However, this is not the case. As the Commission well knows, Staff cannot provide relief from a Commission order, imposing a deadline. Further, the letter only stated that Staff would support a motion to delay the filing. It did not state in any way that Staff purported to waive or delay the filing deadline.

that new rates be in effect no later than the likely date of the Commission's decision following the May 2007 deadline. If Utility had complied with the Commission's Order, it would likely have had new rates in effect by late 2008, and certainly no later than May 31, 2009.

Utility cannot disobey a Commission Order and then try to hide behind the retroactive-ratemaking doctrine. The Commission's orders would mean nothing if it could not enforce them. Providing retroactive rate relief is an appropriate enforcement mechanism.

Exhibit 4 is a suggested amendment to the ROO that provides customers an appropriate remedy for Utility's defiance of a clear Commission Order.

EXCEPTION 5 – <u>UTILITY CANNOT WITHHOLD TREATED EFFLUENT FROM IRRIGATION CUSTOMERS</u>

This Commission has established a strong policy of encouraging golf courses to use effluent for their irrigation needs as much as possible. Utility is well aware of this policy:

> Q. (Mr. Marks) Do you know what the Commission's policy is towards the use of effluent for irrigation needs?
>
> A. (Mr. Tompsett) Whether -- in past orders, yes. The Commission as a whole has -- I don't know if it's specific policy or rule, but they do want them to use effluent rather than groundwater on golf courses or it's their desire, put it that way.
>
> Q. And Chairman Mayes has been one of the biggest advocates of using effluent for golf course irrigation, has she not?
>
> A. I would say that is accurate, yes.[32]

Yet, despite being well aware of the Commission's policy to use effluent for irrigation, the uncontroverted evidence is that Utility deliberately withheld available effluent from Swing First's Johnson Ranch Golf Course.[33] From March 2006 through August 2009, Utility produced far more effluent than it sold, yet during the 2007 test year, Utility sold virtually no effluent to Swing First.

[32] Tr. at 260:23 – 261:8.
[33] Ex. SF-42.

Instead of delivering effluent, Utility wrongly delivered CAP water to Swing First.[34] This was wrong for two reasons. First, delivering CAP water instead of effluent violated Commission policy. Effluent cannot be the source of potable water. In contrast, CAP water is from a renewable source, is arsenic free and, with appropriate treatment, can be delivered to customers as potable water. It should be used for irrigation only if no other source is available. Second, the tariffed rate for CAP water is higher than for effluent. This alone caused higher water bills for Swing First.

Exhibit 5 is a suggested amendment to the ROO that addresses Utility's wrongful withholding of effluent.

EXCEPTION 6 – <u>THE COMMISSION SHOULD ADDRESS UTILITY'S NUMEROUS BILLING AND CUSTOMER-SERVICE ISSUES</u>

In addition to its numerous environmental violations, Utility has had many billing and customer-service issues, which the ROO fails to address.

Residents in the Pecan Ranch North subdivision were justifiably concerned with their health and safety as a result of Utility discharging raw sewage from the Pecan Plant into their neighborhood.[35] Residents organized a protest against Utility and posted pointed comments on a community web page. In retaliation, Utility sued the residents for defamation.[36]

This was not an isolated incident. Swing First filed a complaint at the Commission against Utility concerning utility's rates and charges. Utility retaliated against Swing First's manager, David Ashton, by suing him and his wife for defamation.[37]

Utility's abusive lawsuits were obviously intended to chill protests by forcing defendants to endure the emotional burden of defending a lawsuit and incur the expense of hiring attorneys to defend the lawsuits. The Commission should not allow this type of white-collar thuggery from one of its regulated utilities.

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[34] *Id.*
[35] Tr. at 75:14-23.
[36] Tr. at 78:1-19; Ex. SF-27.
[37] Ex. SF-26.

Utility also significantly overbilled its irrigation customers. In late 2006, Utility began charging Swing First $3.75/1000 gallons for CAP water instead of the lawful tariff rate of $0.827/1000.[38] For the little effluent delivered, Utility charged Swing First $0.827/1000 gallons instead of the tariff rate of $0.62/1000 gallons.[39] The illegal billing continued from December 31, 2006, through June 1, 2007.[40] Further, from January through June 2007, Utility charged the San Tan Heights HOA $3.75/1000 gallons for effluent deliveries instead of the lawful rate of just $0.62/1000 gallons.

Utility also victimized its own employee with a phony bill. The last page of Exhibit SF-30 is an invoice that either George Johnson or Brian Tompsett caused to be sent to Utility employee, Gary Larsen, for water that was actually delivered to Swing First.[41] The total bill was $915.12.[42] The bill was for effluent delivered to Swing First after Utility first shut off service on November 6, 2007, until it again shut off service on November 20, 2007.[43] Utility singled-out Mr. Larsen as the fall guy for Swing First's water being turned back on, and Utility wanted him to pay the price.

> Q. (Mr. Marks) … So your view was Mr. Larsen, somehow or another that water got turned on again, and because that's in your area of responsibility, we're going to make you responsible for that water that was sent; is that your testimony?
>
> A. (Mr. Tompsett) Yes.[44]

There is really nothing much to add to this. Utility's conduct was clearly despicable. No employee should be treated this way.

Utility twice attempted to shut-off Swing First's Irrigation Service. To shut off wastewater service, Utility was required to follow Commission Rule 14-2-509(D - E). Utility simply ignored the Commission's rules.

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[38] Tr. at 281:5 – 283:21.
[39] Tr. at 274:24 – 278:15.
[40] Tr. at 278:4-13; 283:16-21.
[41] See generally Tr. at 434:1 – 453:6
[42] Tr. at 439:25 – 440:2.
[43] Tr. at 448:24 – 449:11
[44] Tr. at 453:1-6.

Utility's only notice that it intended to shut off Swing First's irrigation service came in a November 6, 2007, e-mail from Mr. Tompsett to Mr. Ashton.[45] Utility does not dispute that it did not comply with the Commission's rules:

> Q. (Ms. Mitchell) Prior to this series of e-mails, had a notice that complied with the notice requirements by the Commission rule have been sent to Swing First?
>
> A. (Mr. Tompsett) I don't recall. I don't know.
>
> Q. That's all for this particular document. Well, let me ask a follow-up question. But you are familiar with what is required by Commission rule for termination notice to a customer?
>
> A. Yes.
>
> Q. And you know that it is supposed to include the reason for the termination, the alleged violation, you know, a contact name and address, you do realize it is supposed to contain all of that type of information?
>
> A. Yes. The statute we looked at had a number of items that should be on there, on the shut-off notice, that were not in the e-mail.
>
> Q. And you would agree with me that this series of exchanges really doesn't comply with what is required for termination notices by Commission rule?
>
> A. Per the Commission statute we looked at, no.

Again, Utility does not believe that it needs to follow Commission rules. The Commission should take steps to insure that Utility is familiar with the Commission's rules and is willing to follow them.

Utility also deliberately flooded Swing First's Johnson Ranch Course. On Friday, January 25, 2008, Swing First filed a formal complaint with the Commission (Docket No. WS-02987A-08-0049) concerning Utility's service and billing issues.[46] Utility received a copy of the Complaint on Friday, February 1.[47]

The week beginning on Sunday January 27 had been extremely rainy.[48] As a result, Swing First needed no irrigation water for its golf course.[49]

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[45] Exhibit SF-23.
[46] Ex. SF-38 at 11:2.
[47] Tr. at 404:25 – 405:2.
[48] Ex. SF-38 at 11:5.
[49] *Id.* at 11:5-6.

On the same day it received the Complaint, Utility retaliated against Swing First by delivering significant amounts of effluent to Swing First, despite requests that it not do so.[50] This caused the lake bordering the 18th hole to overflow, which damaged the golf course.[51] Swing First employees asked the Utility several times to stop delivery, but it ignored the requests.[52] The employees then escalated the issue to Mr. Ashton, who then asked Utility several times in writing to stop the deliveries.[53]

Utility's response was simply outrageous. Mr. Tompsett sent an e-mail to Mr. Ashton that clearly showed that Utility was retaliating against Swing First's complaint by flooding the golf course:

> You have now filed a formal complaint with the Arizona Corporation Commission alleging, among other things, service interruptions. You even requested relief asking that 'The Commission to order Utility to continue providing service during the pendency of this matter". We were served with that complaint on Friday February 1, 2008. Now a mere 3 days later you now demand that 'WE STOP THE DELIVERY OF WATER". **Which way do you want it**?[54]

Utility has no right to flood a customer's golf course with effluent under any circumstances. The flooding was particularly egregious when it was in clear, deliberate retaliation against a customer for exercising its legal right to file a complaint against a regulated utility.

Exhibit 6 is a recommended amendment to the ROO which addresses Utility's billing and customer service issues.

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[50] *Id.* at 11:6-8.
[51] *Id.* at 11:8-9.
[52] *Id.* at 11:9-10.
[53] *Id.* at 11:10-11.
[54] Ex. SF-28. Emphasis in original.

RESPECTFULLY SUBMITTED on May 17, 2010.

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P.O. BOX 43020
PHOENIX, AZ 85080-3020
(623) 869-2243

Appendix A
Revised

2006 ANNUAL REPORT - CAGRD

TO BE FILED BY MUNICIPAL WATER PROVIDERS WITH CAGRD MEMBER SERVICE AREAS

CAGRD
RECEIVED
JUN 07 2007
CAGRD

REPORTING PARTY (Water provider Address)
Johnson Utilities, L.L.C.
5230 East Shea Boulevard
Scottsdale, Arizona 85254
Attn: ~~Dee Stewart~~ Brian Tompsett

AMA: Phoenix

AWS DESIGNATION #: 26-400665

If any of the preprinted information provided on this report is incorrect please make the necessary changes

EXCESS GROUNDWATER DELIVERED TO MEMBER SERVICE AREA	1	TOTAL GROUNDWATER WITHDRAWN WITHIN THE MEMBER SERVICE AREA IN 2006* (Must equal the volume reported on part 5.B.5 of the Assured Water Supply Supplement of the ADWR 2006 Annual Report)	1	6746	Acre-ft
	2	MINIMUM EXCESS GROUNDWATER FACTOR	2	0.53	
	3	REQUIRED MINIMUM AMOUNT OF EXCESS GROUNDWATER (multiply line 1 by line 2)	3	3575	Acre-ft
	4	ADDITIONAL AMOUNT REPORTED AS EXCESS GROUNDWATER	4		Acre-ft
	5	TOTAL EXCESS GROUNDWATER (sum of lines 3 and 4, not to exceed line 1) (Must equal the volume reported on part 5.B.6 of the Assured Water Supply Supplement of the ADWR 2006 Annual Report)	5	3575	Acre-ft
CONTRACT REPLENISHMENT ACCOUNT ACTIVITY	5	CONTRACT REPLENISHMENT ACCOUNT BALANCE AS OF JANUARY 1, 2006	5	0	Acre-ft
	6	CONTRACT REPLENISHMENT CREDITS ACCRUED IN 2006	6		
	7	VOLUME OF CONTRACT REPLENISHMENT CREDITS TO BE APPLIED TO REDUCE THE 2006 REPLENISHMENT OBLIGATION	7		
	8	CARRY FORWARD BALANCE IN THE CONTRACT REPLENSHMENT ACCOUNT (Sum OF lines 5 and 6 minus line 7)	8		
SERVICE AREA REPLENISHMENT OBLIGATION	9	2006 CAGRD SERVICE AREA REPLENISHMENT OBLIGATION (subtract line 7 from line 4)	9	3575	Acre-ft

* If the basis for calculating the total groundwater reported on Line 1 is other than by meter, please attach a sheet describing the basis

Mail or hand deliver the completed original of this Annual Report to the Central Arizona Project, 23636 North 7th Street, Phoenix AZ 85024, and a copy to the Arizona Department of Water Resources, 3550 N. Central Avenue, Phoenix, AZ 85012-2105. If mailed the report must be postmarked no later than March 31, 2007. If hand delivered, the report must be received by each entity listed above no later than 5:00 p.m. on March 31, 2007.

REPORTS FILED AFTER MARCH 31, 2007, ARE SUBJECT TO LATE FEES PURSUANT TO A.R.S. 48-3775.

Please enclose a copy of your 2006 ADWR Annual Withdrawal and Use Report (including the AWS Supplement) with this Report.

I hereby certify, under penalty of perjury, that the information contained in this report is, to the best of my knowledge and belief, correct and complete.

Brian P. Tompsett
AUTHORIZED SIGNATURE

Executive Vice President
TITLE

6-4-2007
DATE

Brian P. Tompsett
PRINTED NAME

btompsett@qwest.net
E-MAIL ADDRESS

480-998-3300
PHONE NUMBER

EIMS COPY

CENTRAL ARIZONA GROUNDWATER REPLENISHMENT DISTRICT (CAGRD)
P.O. BOX 43020
PHOENIX, AZ 85080-3020
(623) 869-2243

RECEIVED
MAR 30 2007
CAGRD

2006 ANNUAL REPORT - CAGRD

TO BE FILED BY MUNICIPAL WATER PROVIDERS WITH CAGRD MEMBER SERVICE AREAS

REPORTING PARTY (Water provider, Address)
Johnson Utilities, L.L.C.
5230 East Shea Boulevard
Scottsdale, Arizona 85254
Attn: ~~XXXXXXXXX~~ Brian Tompsett

AMA: Pinal

AWS DESIGNATION #: 26-401382.0000

If any of the preprinted information provided on this report is incorrect, please make the necessary changes.

EXCESS GROUNDWATER DELIVERED TO MEMBER SERVICE AREA	1	TOTAL GROUNDWATER WITHDRAWN WITHIN THE MEMBER SERVICE AREA IN 2006* (Must equal the volume reported on part 5 B 5 of the Assured Water Supply Supplement of the ADWR 2006 Annual Report)	1	223 Acre-ft
	2	MINIMUM EXCESS GROUNDWATER FACTOR	2	0.53
	3	REQUIRED MINIMUM AMOUNT OF EXCESS GROUNDWATER (multiply line 1 by line 2)	3	118 Acre-ft
	4	ADDITIONAL AMOUNT REPORTED AS EXCESS GROUNDWATER	4	Acre-ft
	5	TOTAL EXCESS GROUNDWATER (sum of lines 3 and 4, not to exceed line 1) (Must equal the volume reported on part 5 B 6 of the Assured Water Supply Supplement of the ADWR 2006 Annual Report)	5	118 Acre-ft
CONTRACT REPLENISHMENT ACCOUNT ACTIVITY	5	CONTRACT REPLENISHMENT ACCOUNT BALANCE AS OF JANUARY 1 2006	5	0 Acre ft
	6	CONTRACT REPLENISHMENT CREDITS ACCRUED IN 2006	6	
	7	VOLUME OF CONTRACT REPLENISHMENT CREDITS TO BE APPLIED TO REDUCE THE 2006 REPLENISHMENT OBLIGATION	7	
	8	CARRY FORWARD BALANCE IN THE CONTRACT REPLENSHMENT ACCOUNT (Sum OF lines 5 and 6 minus line 7)	8	
SERVICE AREA REPLENISHMENT OBLIGATION	9	2006 CAGRD SERVICE AREA REPLENISHMENT OBLIGATION (subtract line 7 from line 4)	9	118 Acre-ft

* If the basis for calculating the total groundwater reported on Line 1 is other than by meter, please attach a sheet describing the basis

Mail or hand deliver the completed original of this Annual Report to the Central Arizona Project 23636 North 7th Street, Phoenix, AZ 85024, and a copy to the Arizona Department of Water Resources 3550 N Central Avenue Phoenix, AZ 85012-2105 If mailed the report must be postmarked no later than March 31, 2007 If hand delivered, the report must be received by each entity listed above no later than 5.00 p.m on March 31 2007.

REPORTS FILED AFTER MARCH 31, 2007, ARE SUBJECT TO LATE FEES PURSUANT TO A.R.S. 48-3775.

**** Please enclose a copy of your 2006 ADWR Annual Withdrawal and Use Report (including the AWS Supplement) with this Report ****

I hereby certify, under penalty of perjury, that the information contained in this report is, to the best of my knowledge and belief, correct and complete.

AUTHORIZED SIGNATURE	Executive Vice President	3.29.2007	
	TITLE	DATE	
Brian P. Tompsett	btompsett@qwest.net	(480) 998-3300	
PRINTED NAME	E-MAIL ADDRESS	PHONE NUMBER	

EIMS COPY

Appendix B

Adopted: June 19, 2008

CENTRAL ARIZONA GROUNDWATER REPLENISHMENT DISTRICT FINAL 2008/09 AND 2009/10 RATE SCHEDULE

ASSESSMENT RATES

Units = $/acre-foot

	Historic 2007/08	**Firm 2008/09**	**Firm 2009/10**	Advisory 2010/11	Advisory 2011/12	Advisory 2012/13	Advisory 2013/14
Phoenix Active Management Area							
Water & Replenishment Component [1]	$ 112	**$ 134**	**$ 143**	$ 154	$ 157	$ 162	$ 166
Administrative Component [2]	28	**33**	**33**	31	29	27	25
Infrastructure & Water Rights Component [3]	79	**90**	**101**	112	115	118	122
Replenishment Reserve Charge [4]	21	**33**	**41**	49	57	60	63
Total Assessment Rate ($/AF)	$ 240	**$ 290**	**$ 318**	$ 346	$ 358	$ 367	$ 376
Pinal Active Management Area							
Water & Replenishment Component [1]	$ 87	**$ 100**	**$ 107**	$ 117	$ 117	$ 125	$ 134
Administrative Component [2]	28	**33**	**33**	31	29	27	25
Infrastructure & Water Rights Component [3]	79	**90**	**101**	112	115	118	122
Replenishment Reserve Charge [4]	25	**31**	**38**	45	51	54	56
Total Assessment Rate ($/AF)	$ 219	**$ 254**	**$ 279**	$ 305	$ 312	$ 324	$ 337
Tucson Active Management Area							
Water & Replenishment Component [1]	$ 133	**$ 143**	**$ 153**	$ 164	$ 161	$ 168	$ 177
Administrative Component [2]	28	**33**	**33**	31	29	27	25
Infrastructure & Water Rights Component [3]	79	**90**	**101**	112	115	118	122
Replenishment Reserve Charge [4]	25	**39**	**46**	54	61	65	67
Total Assessment Rate ($/AF)	$ 265	**$ 305**	**$ 333**	$ 361	$ 366	$ 378	$ 391
Contract Replenishment Tax - Scottsdale [5]							
Cost of Water	$ 108	**$ 112**	**$ 126**	$ 133	$ 139	$ 136	$ 144
Cost of Transportation	0	**0**	**0**	0	0	0	0
Cost of Replenishment	0	**0**	**0**	0	0	0	0
Administrative Component [2]	28	**33**	**33**	31	29	27	25
Total Tax Rate ($/AF)	$ 136	**$ 145**	**$ 159**	$ 164	$ 168	$ 163	$ 169

ENROLLMENT & ACTIVATION FEES

Units = $/Housing Unit

Enrollment Fee [6]	$ 23	**$ 74**	**$ 83**	$ 92	$ 94	$ 96	$ 100
Activation Fee [6]	$ 63	**$ 72**	**$ 81**	$ 90	$ 92	$ 94	$ 98

Adopted: June 19, 2008

CENTRAL ARIZONA GROUNDWATER REPLENISHMENT DISTRICT FINAL 2008/09 AND 2009/10 RATE SCHEDULE

NOTES:

1 The Water & Replenishment Component includes the projected cost to purchase and recharge water and effluent. For rate development purposes it was assumed that the replenishment of effluent would have the same cost as Excess CAP water recharged at a CAP state demonstration recharge project. The total volume to be purchased and replenished includes the replenishment obligation plus a sufficient volume to offset losses incurred during the replenishment process (generally 1% to 2.5%). For the Phoenix Active Management Area (AMA), replenishment will be accomplished at direct underground storage facilities (USFs) and groundwater savings facilities (GSFs). For the Pinal AMA, replenishment will be accomplished at GSFs. For the Tucson AMA, replenishment will be accomplished at USFs.

2 The Administrative Component is designed to cover all CAGRD administrative costs. $2/AF has been added to this component to help fund the CAGRD conservation program.

3 The Infrastructure & Water Rights Component was established to provide funds to (1) purchase long-term rights to water as opportunities arise, and (2) construct additional infrastructure facilities as the need arises in the future.

4 The Replenishment Reserve Charge is based on a program to establish a replenishment reserve of long-term storage credits as required by statutes. Excess CAP water will be purchased at the CAP Incentive Recharge rate and stored at a combination of USFs and GSFs in the Phoenix and Tucson AMAs. In the Pinal AMA, credits will be purchased from CAP at the incentive recharge rate in accordance with Board policy adopted on October 6, 2005. This charge will be levied as provided in ARS Sections 48-3774.01 and 48-3780.01.

5 The components of the Contract Replenishment Tax - Scottsdale reflect the provisions in the Water Availability Status Contract to Replenish Groundwater Between CAWCD and Scottsdale. The rates reflect the assumption that Excess CAP water will be available to meet the associated contract replenishment obligations.

6 The Enrollment Fee and Activation Fee reflect the fees established pursuant to the CAGRD Enrollment Fee and Activation Fee Policy adopted by the Board on May 1, 2008. $2 per housing unit is included in the enrollment fee to help fund CAGRD's conservation program.

EXHIBIT 1

SUGGESTED AMENDMENT TO RECOMMENDED OPINION AND ORDER TO REMOVE OPERATING MARGIN RELIEF

Page 50, Line 24,

DELETE last two paragraphs through page 51, line 12, and REPLACE with the following paragraphs:

The Commission has disallowed millions of dollars in rate base plant, because plant was not supported by adequate records, adjustments were necessary to remove affiliate profits, plant exceeded customer needs, plant was not used and useful, or for other carefully analyzed reasons. We cannot effectively reverse these disallowances by then setting rates to provide the Company a ten-percent operating margin, as recommended by Staff.

The Commission has historically provided operating margin relief only for small utilities to allow them to fund needed capital expenditures. This is an extraordinary remedy, not required by the Constitution.

Requiring customers to gift $2.3 million annually to the Company would be the most egregious form of corporate welfare. Based on its Annual Reports to the Commission, the Company has reported significant profits for both its water and sewer division every year from 2002 through the 2007 test year. Yet, despite generating millions of dollars in profits, the Company still has almost no equity in its capital structure.[1]

Finally, there is no reason to provide more rate relief than is constitutionally required to a company with an environmental and customer service record like the Company's. As will be discussed below, since 2003, ADEQ has issued Company an amazing 14 NOVs for various environmental infractions.[2] Six of these NOVs are still open and unresolved.[3] As will also be discussed below, the Company has also blatantly

[1] Direct Testimony of Staff witness Jeffrey Michlik (Exh. S-38) at 35.
[2] Exh. SF-9; Tr. at 1025:22-24.
[3] Tr. at 377:22 – 382:9.

disregarded its obligation to render accurate bills and provide adequate customer service. Providing the Company operating-margin relief would simply reward bad behavior. Therefore rates should be should be set only to recover its test-year expenses and no higher.

Make all other conforming changes

EXHIBIT 2

SUGGESTED AMENDMENT TO RECOMMENDED OPINION AND ORDER TO SET APPROPIRATE CAGRD EXPENSE

Page 45, line 15

DELETE paragraph and REPLACE with the following paragraph:

Under these circumstances the Company should only be allowed to recover its test-year CAGRD expense of $883,842.

Make all other conforming changes

EXHIBIT 3

SUGGESTED AMENDMENT TO RECOMMENDED OPINION AND ORDER TO ADDRESS ENVIRONMENTAL VIOLATIONS

DELETE page 56 from the sentence on line 9 beginning "However, ..." through the end of the paragraph.

DELETE page 56 from the sentence on line 24 beginning "We will require" through the end of the paragraph, and REPLACE with the following new paragraphs:

In Docket No. WS-02987A-07-0487, the Company applied to extend its sewer CC&N. The Pecan Wastewater Treatment Plant's performance issues were closely considered in that case, and on March 17, 2009, the Commission issued Decision No. 70849. In that Decision the Commission expressed specific concern about the Company's continuing sewer spills:

> However, Johnson's two recent SSOs raise serious concerns regarding public safety. The Company experienced two SSOs in the same location within a short time span. The homeowners in the Pecan Creek North subdivision, living adjacent to the concrete channel where the sewage from the SSOs was contained, were subjected to viewing sewage from their homes and test results of the storm water in the Queen Creek wash adjacent to where the SSOs occurred continue to test positive for the presence of E. coli and coliform.[1]

The Commission did not believe that the Company had fully dealt with all the Pecan Plant issues, so the Decision contains three specific ordering paragraphs.

> IT IS FURTHER ORDERED that Johnson Utility L.L.C., shall file by December 31, 2009, with Docket Control, as a compliance item in this docket, documentation from the Arizona Department of Environmental Quality demonstrating that Johnson Utility L.L.C.'s Pecan Water Reclamation Plant (ADEQ Inventory #105324) is in full compliance and that the Notice of Violation issued on March 4, 2008, and June 5, 2008, have been closed.
>
> IT IS FURTHER ORDERED that if Johnson Utility L.L.C. fails to meet the above timeframe, the Utilities Division Staff shall file a pleading requesting the Commission to order Johnson Utility L.L.C. to appear and show cause why the conditional extension of its wastewater Certificate of

[1] Decision No. 70849, dated March 17, 2009, at 11:11-12. Emphasis added.

> Convenience and Necessity granted herein, should not be considered null and void.
>
> IT IS FURTHER ORDERED that if Johnson Utility L.L.C. achieves full compliance with the Arizona Department of Environmental Quality for its Pecan Water Reclamation Plant (ADEQ Inventory #105324) on or before December 31, 2009, the extension of Johnson Utility L.L.C.'s Wastewater Certificate of Convenience and Necessity shall become effective on the first day of the month following Johnson Utility L.L.C.'s filing with Docket Control proof of its compliance and the Utilities Division Staff's confirmation of such compliance with Docket Control.[2]

Despite the Commission's clear Orders, the Company has simply ignored the Commission's December 31, 2009, deadline. Nothing has been submitted in the docket file showing that the Company is in full compliance with ADEQ or that the NOVs have been closed.

We will give the Company one last chance to resolve its numerous environmental violations. We will require the Company to demonstrate by December 31, 2010, that it is in full compliance with the ADEQ and that all open NOVs have been closed. If the Company fails to meet the above timeframe, the Staff shall file a pleading requesting the Commission to order the Company to appear and show cause why its water and sewer CC&Ns should not be revoked and an interim operator appointed until a permanent replacement can be found to assume the CC&Ns.

DELETE CONCLUSIONS OF LAW 7 and 8 and REPLACE with the following paragraphs:

It is reasonable and in the public interest to require the Company to demonstrate by December 31, 2010, that it is in full compliance with the ADEQ and that all open NOVs have been closed.

It is reasonable and in the public interest that Staff shall initiate an order to show cause if the Company does not demonstrate by December 31, 2010 that it is in full compliance with the ADEQ and that all open NOVs have been closed.

---

[2] *Id.* at 13:25 – 14:11. Emphasis added.

ADD new ORDERING PARAGRAPHS:

IT IS FURTHER ORDERED that Johnson Utilities, L.L.C., shall file by December 31, 2010, with Docket Control, as a compliance item in this docket, documentation from the Arizona Department of Environmental Quality demonstrating that Johnson Utilities, L.L.C is in full compliance and that all currently open Notices of Violation have been closed.

IT IS FURTHER ORDERED that if Johnson Utilities, L.L.C. fails to meet the above timeframe, the Utilities Division Staff shall file a pleading requesting the Commission to order Johnson Utilities, L.L.C. to appear and show cause why its water and sewer CC&Ns should not be revoked and an interim operator appointed until a permanent replacement can be found to assume the CC&Ns, and that the Commission should not impose additional penalties, as appropriate.

EXHIBIT 4

SUGGESTED AMENDMENT TO RECOMMENDED OPINION AND ORDER TO PROVIDE RETROACTIVE RATE REDUCTIONS

Page 58, line 21, INSERT the following paragraphs:

In Decision No. 68235, dated October 25, 2005, the Commission ordered the Company to file a rate case for its water and wastewater divisions by May 1, 2007, using a 2006 test-year. The Company made a series of dilatory filings requesting relief from that requirement. However, the Commission never granted the Company's request.[1]

The Company simply ignored the Commission's Order. Despite never having obtained Commission relief from the filing deadline, the Company delayed its rate filing until March 31, 2008, based on a 2007 test year.

This Order provides significant rate decreases for both of the Company's water and wastewater divisions. It is quite likely that the Company's delayed filing caused these rate decreases to also be delayed.

The Company's customers were the victims of the Company's failure to comply with a clear Commission Order. The Commission has the opportunity to make these customers whole by ordering that the rate decreases be retroactive to May 31, 2009, and ordering customer refunds of the excess rates since then, including interest at the 8.18% cost-of-capital rate calculated by RUCO, which we adopt as the Company's cost of capital for purposes of this proceeding.

The bar on retroactive ratemaking does not apply. The Company was ordered to file a rate case by May 2007. When the Commission ordered this filing deadline, it also was in effect ordering that new rates be in effect no later than the likely date of the Commission's decision following the May 2007 deadline. If the Company had complied

[1] Utility has argued that a September 18, 2007, letter from Commission Chief Counsel Chris Kempley somehow authorized the delay. However, this is not the case. Staff cannot provide relief from a Commission order, imposing a deadline. Further, the letter only stated that Staff would support a motion to delay the filing. It did not state in any way that Staff purported to waive or delay the filing deadline.

with the Commission's Order, it would likely have had new rates in effect by late 2008, and certainly no later than May 31, 2009.

The Company cannot disobey a Commission Order and then try to hide behind the retroactive-ratemaking doctrine. The Commission's Orders would mean nothing if it could not enforce them. Providing retroactive rate relief is an appropriate enforcement mechanism.

ADD new CONCLUSION OF LAW:

It is reasonable and in the public interest to deal with the Company's failure to comply with Decision No. 68235, dated October 25, 2005, and file a rate case for its water and wastewater divisions by May 1, 2007, by providing that the rate decreases be retroactive to May 31, 2009, and ordering customer refunds of the excess rates since then, including interest at the Company's 8.18% cost of capital.

In the first ORDERING PARAGRAPH, change the effective date to June 1, 2009.

ADD new ORDERING PARAGRAPH, following the first ORDERING PARAGRAPH:

IT IS FURTHER ORDERED that the Company shall provide refunds to customers for all service rendered at rates exceeding those effective on and after June 1, 2009, together with interest at the rate of 8.18% interest, compounded annually.

EXHIBIT 5

SUGGESTED AMENDMENT TO RECOMMENDED OPINION AND ORDER TO ADDRESS FAILURE TO DELIVER EFFLUENT

Page 59, line 9, ADD new Section as follows:

E. Effluent Deliveries

This Commission has established a strong policy of encouraging golf courses to use effluent for their irrigation needs as much as possible. The Company is well aware of this policy:

> Q. (Mr. Marks) Do you know what the Commission's policy is towards the use of effluent for irrigation needs?
>
> A. (Mr. Tompsett) Whether -- in past orders, yes. The Commission as a whole has -- I don't know if it's specific policy or rule, but they do want them to use effluent rather than groundwater on golf courses or it's their desire, put it that way.
>
> Q. And Chairman Mayes has been one of the biggest advocates of using effluent for golf course irrigation, has she not?
>
> A. I would say that is accurate, yes.[1]

Yet, despite being well aware of the Commission's policy to use effluent for irrigation, the uncontroverted evidence is that the Company deliberately withheld available effluent from Swing First's Johnson Ranch Golf Course.[2] From March 2006 through August 2009, the Company produced far more effluent than it sold, yet during the 2007 test year, the Company sold virtually no effluent to Swing First.

Instead of delivering effluent, the Company wrongly delivered CAP water to Swing First.[3] This was against the public interest for two reasons. First, delivering CAP water instead of effluent violated Commission policy. Effluent cannot be the source of potable water. In contrast, CAP water is from a renewable source, is arsenic free and, with appropriate treatment, can be delivered to customers as potable water. It should be used for irrigation only if no other source is available. Second, the tariffed rate for CAP water is higher than for effluent. This alone caused higher water bills for Swing First.

---

[1] Tr. at 260:23 – 261:8.
[2] Ex. SF-42.
[3] *Id.*

The Company is hereby put on notice that it is obligated to provide effluent to the full extent available to satisfy golf-course and other irrigation needs. Further, it may not add new effluent customers, recharge effluent, or make other uses of its effluent until it has satisfied the irrigation requirements of its existing effluent customers. Finally, it will work with its effluent customers to schedule effluent deliveries to satisfy their irrigation needs and to avoid detrimental over-deliveries to the maximum possible extent.

EXHIBIT 6

SUGGESTED AMENDMENT TO RECOMMENDED OPINION AND ORDER TO ADDRESS BILLING AND CUSTOMER SERVICE ISSUES

Page 59, line 5, DELETE paragraph ending on line 8, and REPLACE with the following paragraphs:

In addition to its numerous environmental violations, the Company has had numerous billing and customer-service issues, not just limited to Swing First Golf.

First, residents in the Pecan Ranch North subdivision were justifiably concerned with their health and safety as a result of the Company discharging raw sewage from the Pecan Plant into their neighborhood.[1] Residents organized a protest against the Company and posted pointed comments on a community web page. In retaliation, the Company sued the residents for defamation.[2]

This was not an isolated incident. Swing First filed a complaint at the Commission against the Company concerning utility's rates and charges. The Company immediately sued Swing First's manager, David Ashton, and his wife for defamation.[3]

The Company's abusive lawsuits were obviously intended to chill protests by forcing defendants to endure the emotional burden of defending a lawsuit and incur the expense of hiring attorneys to defend the lawsuits. The Commission will not tolerate this type of behavior from one of its regulated utilities.

The Company also significantly overbilled its irrigation customers. In late 2006, the Company began charging Swing First $3.75/1000 gallons for CAP water instead of the lawful tariff rate of $0.827/1000.[4] For the little effluent delivered, the Company charged Swing First $0.827/1000 gallons instead of the tariff rate of $0.62/1000 gallons.[5] The illegal billing continued from December 31, 2006, through June 1, 2007.[6] Further, from January through June 2007, the Company charged the San Tan Heights

[1] Tr. at 75:14-23.
[2] Tr. at 78:1-19; Ex. SF-27.
[3] Ex. SF-26.
[4] Tr. at 281:5 – 283:21.
[5] Tr. at 274:24 – 278:15.
[6] Tr. at 278:4-13; 283:16-21.

Homeowners Association $3.75/1000 gallons for effluent deliveries instead of the lawful rate of just $0.62/1000 gallons. Although the Company appears to have corrected its HOA overbillings, the Swing First overbillings remain at issue.

The Company also victimized its own employee with a phony bill. The Company sent an invoice to the Company employee, Gary Larsen, for water that was actually delivered to Swing First.[7] The total bill was $915.12.[8] The bill was for effluent delivered to Swing First after the Company first shut off service on November 6, 2007, until it again shut off service on November 20, 2007.[9] the Company appears to have singled-out Mr. Larsen as responsible for Swing First's water being turned back on:.

> Q. (Mr. Marks) ... So your view was Mr. Larsen, somehow or another that water got turned on again, and because that's in your area of responsibility, we're going to make you responsible for that water that was sent; is that your testimony?
>
> A. (Mr. Tompsett) Yes.[10]

The Company's unauthorized billing of its own employee for water he did not use greatly concerns this Commission. The Commission will not tolerate this type of abuse.

The Company twice shut-off Swing First's irrigation service. To shut off wastewater service, the Company was required to follow Commission Rule 14-2-509(D - E). The Company simply ignored the Commission's rules. The Company's only notice that it intended to shut off Swing First's irrigation service came in a November 6, 2007, e-mail from Mr. Tompsett to Mr. Ashton.[11] The Company agrees that it did not comply with the Commission's rules:

> Q. (Ms. Mitchell) Prior to this series of e-mails, had a notice that complied with the notice requirements by the Commission rule have been sent to Swing First?
>
> A. (Mr. Tompsett) I don't recall. I don't know.

---

[7] See generally Tr. at 434:1 – 453:6
[8] Tr. at 439:25 – 440:2.
[9] Tr. at 448:24 – 449:11
[10] Tr. at 453:1-6.
[11] Exhibit SF-23.

Q. That's all for this particular document. Well, let me ask a follow-up question. But you are familiar with what is required by Commission rule for termination notice to a customer?

A. Yes.

Q. And you know that it is supposed to include the reason for the termination, the alleged violation, you know, a contact name and address, you do realize it is supposed to contain all of that type of information?

A. Yes. The statute we looked at had a number of items that should be on there, on the shut-off notice, that were not in the e-mail.

Q. And you would agree with me that this series of exchanges really doesn't comply with what is required for termination notices by Commission rule?

A. Per the Commission statute we looked at, no.

The Company must be aware of the Commission's rules and comply with them at all time.

The Company also appears to have deliberately flooded Swing First's Johnson Ranch Course. On Friday, January 25, 2008, Swing First filed a formal complaint with the Commission (Docket No. WS-02987A-08-0049) concerning the Company's service and billing issues.[12] The Company received a copy of the Complaint on Friday, February 1.[13] On the same day it received the Complaint, the Company began delivering significant amounts of effluent to Swing First, despite requests that it not do so.[14] This caused the lake bordering the 18th hole to overflow, which damaged the golf course.[15] Swing First employees asked the Company several times to stop delivery, but they ignored the requests.[16] The employees then escalated the issue to Mr. Ashton, who then asked the Company several times in writing to stop the deliveries.[17]

Mr. Tompsett then sent an e-mail to Mr. Ashton that clearly showed that the Company was retaliating against Swing First's complaint by flooding the golf course:

[12] Ex. SF-38 at 11:2.
[13] Tr. at 404:25 – 405:2.
[14] *Id.* at 11:6-8.
[15] *Id.* at 11:8-9.
[16] *Id.* at 11:9-10.
[17] *Id.* at 11:10-11.

> You have now filed a formal complaint with the Arizona Corporation Commission alleging, among other things, service interruptions. You even requested relief asking that 'The Commission to order the Company to continue providing service during the pendency of this matter". We were served with that complaint on Friday February 1, 2008. Now a mere 3 days later you now demand that 'WE STOP THE DELIVERY OF WATER". **Which way do you want it**?[18]

The Company has no right to flood a customer's golf course with effluent under any circumstances. The flooding was particularly egregious when it appears to have been a deliberate retaliation against a customer for exercising its legal right to file a complaint with this Commission.

The Commission is putting Utility on notice that it is obligated to provide accurate bills, to promptly correct any inaccuracies, to deliver no more effluent than a customer requires, to comply with the Commission's disconnection rules, and to otherwise not abuse its status as a Commission-regulated public service company. Future violations will result in harsh consequences.

However, the Commission is not providing specific remedies to Swing First for the violations identified in this case. Instead they will be provided, as appropriate, in Swing First's pending Complaint case.

[18] Ex. SF-28. Emphasis in original.